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EXAMINER

SAWHNEY, HARGOBIND S

ART UNIT PAPER NUMBER

2875

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/941,111

Applicant(s)

MAZURSKY ET AL.

Examiner

Hargobind S Sawhney

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-13, 15-21, 23-26 and 28-33 is/are pending in the application.
- 4a) Of the above claim(s) 27 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 15, 16, 18, 19, 28, 30 and 33 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11-13, 17, 20, 21, 23, 25, 26, 29, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The amendment filed on July 16, 2002 has been entered. Accordingly:
  - Claims 1, 6, 9-11, 13, 15, 18-21, 26 and 28 have been amended; and
  - Claims 5, 14, 22 and 27 have been cancelled.

### ***Allowable Subject Matter***

2. The indicated allowability of claims 5, 12, 22, 29 and 32 is withdrawn in view of further examination and the newly discovered reference(s) including Spector (US Patent No. 4,714,984), Babasade (US Patent No. 5,574,821) and Roe (US Patent Application Pub. No.: US2002/0176704). Rejections based on the newly cited reference(s) follow.

### ***Claim Objections***

3. Claims 29 and 6-8 are objected to because of the following informalities:

Claim 29, line 14, "he" needs to be rephrased as -- the --;

Claims 6-8 are necessarily objected because of their dependency on the objected base Claim 29.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 12, 17,23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borri (Patent No. 6,527,402) in view of Muderlak (Patent No. 5,111,477).

Regarding Claim 1, Borri ('402) discloses an apparatus 1 (Figures 3-5, column 1, line 53) for emitting light, sound and fragrance comprising:

- a housing 2 (Figures 3-5, column 1, lines 53 and 54;
- a lighting system 10 (Figures 1-5, column 2, lines 1-8), a sound system 10 (abstract, Figures 1-5, column 1, lines 63-67, and column 2, line 1) and a fragrance system including elements 3 and 4, and contained in the housing 2 (Figures 1-5, column 1, lines 54-58) each positioned in the housing;

Note: the fragrance system hereafter referred as the fragrance system 3,4.

- a means 13 (Figures 3-5, column 2, line 9) energizing the lighting system, a sound system and the fragrance system 3,4, all included in an associated means 10 (Figures 3-5, column 2, lines 14-16);

- the lighting system in the means 10 including a light source 35 (Figure 2, column 2, lines 1-4);
- the sound system included the element 10, and further comprising a circuit board, at least one chip, an amplifier and speakers (Figures 1-5, column 2, lines 62-67, and column 3, line 1); and
- the fragrance system including the aperture 3 and a spray 4, casing 2 containing and dispensing fragrance to the surrounding area (Figures 1 and 2, column 1, lines 54-58).

However, regarding Claim 1, neither combined nor individual teaching of Borri ('402) and Muderlak ('477) teaches the fragrance being obtained from a gel pack.

It would have been an obvious matter of design choice to replace the fragrance spray with a gel pack well known in the art including Babasade (US Patent No.: 5,574,821, column 3, line 54). Since the applicant has not disclosed that the gel pack of fragrance solves any problem or is for a particular reason, it appears that the claimed invention would perform equally well with a gel pack of fragrance.

Further, regarding Claim 1, Borri ('402) further teaches energy means 13 (Figures 3-5, column 2, line 9) including either battery or another powering elements associated with the casing (column 2, lines 14-16).

However, Borri ('402) does not specifically teach a plug including contact blades rigidly mounted with respect to the housing. Further Borri ('402) additionally does not teach the plug being rotatable, and accommodating horizontal and vertical plugs

On the other hand, Muderlak ('477) discloses a fragrance diffuser 100 (Figures 1-4, column 4, line 62) comprising:

- a plug including contact blades 206 and 208 (Figures 3 and 4, column 7, lines 7-12) rigidly mounted with respect to the housing; and
- the contact blades 206 and 208 mechanically supporting the apparatus with their insertion in an electric wall socket (Figures 3 and 4).

It would have been obvious to one having ordinary skill in the art at the time of invention was made to modify the apparatus of Borri ('402) by providing the plug as taught by Muderlak ('477) for the benefits and advantages of mounting the apparatus in the desired orientation in a structurally secure manner without using additional supporting elements.

Regarding claims 2-4, 12 and 25, Borri ('402) further discloses:

- the lighting, sound and fragrance systems, being included in the means 10 associated with the housing, and activated simultaneously (Figures 1 and 2, column 2, lines 19-21);
- the energizing means being at least one electrical switch 14 (Figures 1 and 2, column 2, lines 19-21, column 3, lines 32-36);
- the energizing means 14 selectively operating each system independently (Figures 1-3, column 2, lines 59-65); and
- the light source 35 - incandescent lamp - capable of generating sufficient heat to vaporize the fragrance (Figure 2, column 2, lines 1-4).

Regarding Claim 25, Borri ('402) discloses the light source 35- incandescent lamp 35 (Figure 2, column 2, lines 1-4). However, Borri ('402) does not specifically teach the light source being covered with a semi-permeable cover allowing transmission of light.

It would have been obvious to one having ordinary skill in the art at the time of invention was made to modify the apparatus of Borri ('402) by providing a lamp housed within the housing, and covering the lamp with a light permeable cover well known in the art to protect the light source.

Regarding claims 17 and 23, Borri ('402) further discloses:

- the sound chip included in the music system 10, and being permanently mounted on the circuit board (Figures 1-5, column 2, lines 62-67, and column 3, line 1); and
- a timing mechanism 21 (Figure 3, column 2, lines 62-65) actuating at least one, lighting, sound and fragrance, systems.

6. Claims 29 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borri (US Patent No. 6,527,402) in view of Muderlak (US Patent No. 5,111,477) and Spector (US Patent No. 4,714,984).

Regarding Claim 29, Borri ('402) in view of Muderlak ('477) meets the limitations in similar manner as that for Claim 1 as detailed above.

However, regarding Claim 29, neither combined nor individual teaching of Borri ('402) and Muderlak ('477) teaches the disclosed apparatus including an interchangeable faceplate.

On the other hand, Spector ('984) discloses a night-light 10 (Figure 1) comprising an interchangeable faceplate 16 (Figures 1-3, claim 1D).

Thus, regarding Claim 29, it would have been obvious to one having ordinary skill in the art at the time of invention was made to modify the apparatus of Borri ('402) in view of Muderlak ('477) by providing the face plate as taught by Spector ('984) for the benefits and advantages of providing means for variety of exhibits mounted on the apparatus.

Regarding claims 6-8, each dependent on Claim 29, the apparatus disclosed by Borri ('402) in view of Muderlak ('477) and Spector ('984) further includes:

- the translucent areas 36 (Spector, Figure 4, column 4, line 58) illuminated by a light source B (Spector, Figures 4 and 5), and further having a recessed area 16 bearing graphic image (Spector, Figures 4 and 5).

7. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borri (US Patent No. 6,527,402).

Borri ('402) discloses an apparatus 1 (Figures 3-5, column 1, line 53) for emitting light, sound and fragrance comprising:

- a housing 2 (Figures 3-5, column 1, lines 53 and 54;
- a lighting system 10 (Figures 1-5, column 2, lines 1-8), a sound system 10 (abstract, Figures 1-5, column 1, lines 63-67, and column 2, line 1) and a fragrance system including elements 3 and 4, and contained in the housing 2 (Figures 1-5, column 1, lines 54-58) each positioned in the housing;

Note: the fragrance system hereafter referred as the fragrance system 3,4.



Art Unit: 2875

- a means 13 (Figures 3-5, column 2, line 9) energizing the lighting system 10, a sound system 10 and the fragrance system 3,4 (Figures 3-5, column 2, lines 14-16);
- the lighting system 10 including a light source 35 (Figure 2, column 2, lines 1-4);
- the sound system included the element 10, and further comprising a circuit board, at least one chip, an amplifier and speakers (Figures 1-5, column 2, lines 62-67, and column 3, line 1);
- the fragrance system including the aperture 3 and a spray 4, can 2 containing and dispensing fragrance to the surrounding area (Figures 1 and 2, column 1, lines 54-58).

In addition, Borri ('402) discloses an apparatus including a sound generator of any known type, either manually operated or operated by an electronic circuit (Figures 1 and 2, column 2, lines 65-67, and column 3, line 1) obviously including a chip mounted on it. Thus, Borri further discloses that the sound generator means including replaceable chips - electronic modules - (Figures 1 and 2, column 3, lines 32-34).

8. Claims 9,11,13, 26 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borri (US Patent No. 6,527,402) in view of Jaworski et al. (US Patent No. 6,478,440).

Regarding Claim 32, Borri ('402) discloses an apparatus 1 (Figures 3-5, column 1, line 53) for emitting light, sound and fragrance comprising:  
a housing 2 (Figures 3-5, column 1, lines 53 and 54;

Art Unit: 2875

- a lighting system 10 (Figures 1-5, column 2, lines 1-8), a sound system 10 (abstract, Figures 1-5, column 1, lines 63-67, and column 2, line 1) and a fragrance system including elements 3 and 4, and contained in the housing 2 (Figures 1-5, column 1, lines 54-58) each positioned in the housing;

Note: the fragrance system hereafter referred as the fragrance system 3,4.

- a means 13 (Figures 3-5, column 2, line 9) energizing the lighting system 10, a sound system 10 and the fragrance system 3,4 (Figures 3-5, column 2, lines 14-16);
- the lighting system 10 including a light source 35 (Figure 2, column 2, lines 1-4);
- the sound system included the element 10, and further comprising a circuit board, at least one chip, an amplifier and speakers (Figures 1-5, column 2, lines 62-67, and column 3, line 1);
- the fragrance system including the aperture 3 and a spray 4, can 2 containing and dispensing fragrance to the surrounding area (Figures 1 and 2, column 1, lines 54-58).

However, regarding Claim 32, Borri ('402) does not teach the use of an optical sensor for his disclosed apparatus.

On the other hand, Jaworski et al. ('440) discloses a night light air freshener 1 (Figure 1) comprising an optical sensor (Figures 2-5, column 6, lines 34-41) actuating automatic operation of illuminating means.

Thus, regarding Claim 32, it would have been obvious to one having ordinary skill in the art at the time of invention was made to modify the apparatus of Borri ('402) in by providing the optical sensor as taught by Jaworski et al. ('440) for the benefits and advantages of facilitating the user with an automatic actuation of the illuminating means.

Regarding Claim 9, Borri ('402) in view of Jaworski et al. ('440) discloses the apparatus further including a light source 35 (Figure 2, column 2, lines 1-4).

However, Borri ('402) Borri ('402) does not teach the light source being a strobe light.

It would have been an obvious matter of design choice to replace the light source included in the apparatus disclosed by Borri with a strobe light well known in the art. Since the applicant has not disclosed that the strobe light solves any problem or is for a particular reason, it appears that the claimed invention would perform equally well with a strobe light.

Regarding Claim 11, Borri ('402) in view of Jaworski et al. ('440) further discloses an apparatus for emitting light, sound and fragrance, and additionally including a light source 35 including a light emitting diode (LED) 35 (Borri, Figure 2, column 2, lines 1-4).

Regarding Claim 13, neither combined nor individual teaching of Borri ('402) and Jaworski et al. ('440) teaches the fragrance being obtained from a gel pack.

It would have been an obvious matter of design choice to replace the fragrance spray with a gel pack well known in the art including Babasade (US Patent No.: 5,574,821, column 3, line 54). Since the applicant has not disclosed that the gel pack of

Art Unit: 2875

fragrance solves any problem or is for a particular reason, it appears that the claimed invention would perform equally well with a gel pack of fragrance.

Regarding Claim 26, Borri ('402) in view of Jaworski et al. ('440) teaches the apparatus further comprising the housing 2 (Figures 3-5, column 1, lines 53 and 54) further including a venting means 3 (Borri, Figures 1 and 2, column 1, lines 54 and 55) emitting fragrance.

9. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borri (US Patent No. 6,527,402) in view of Jaworski et al. (US Patent No. 6,478,440) as applied to claim 32 above, and further in view of Muderlak (Patent No. 5,111,477).

Neither combined nor individual teachings of Borri ('402) and Jaworski et al. ('440) teaches a plug including contact blades rigidly mounted with respect to the housing. Further Borri ('402) additionally does not teach the plug being rotatable, and accommodating horizontal and vertical plugs

On the other hand, Muderlak ('477) discloses a fragrance diffuser 100 (Figures 1-4, column 4, line 62) comprising:

- the contact blades 206 and 208 connected to an electric wall socket (Figures 3 and 4), and being rotatable for a horizontal or vertical electrical outlet (Figure 3, column 7, lines 4-12).

It would have been obvious to one having ordinary skill in the art at the time of invention was made to modify the apparatus of Borri ('402) and Jaworski et al. ('440) by providing the plug as taught by Muderlak ('477) for the benefits and advantages of

Art Unit: 2875

mounting the apparatus in the desired orientation in a structurally secure manner without using additional supporting elements.

10. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borri (Patent No. 6,527,402) in view of Jaworski et al. (US Patent No. 6,478,440) as applied to Claim 32 above, and further in view of Yoshida et al. (Patent No. 5,982,414).

Borri ('402) in view of Jaworski et al. ('440) discloses an apparatus for emitting light, sound and fragrance being actuated with a local switch. However, neither Borri nor Jaworski et al. ('440) teaches the apparatus comprising a remotely actuating device.

On the other hand, Yoshida et al. (Patent No. 5,982,414) discloses a bi-directional signal distributing system for a system furnishing luminance , audio and fragrance for human relaxation (abstract, column 1, lines 35-42). Yoshida further teaches a bi-directional remote actuating system (claims 6,8 and 9).

It would have been obvious to one having ordinary skill in the art at the time of invention was made to modify the apparatus of Borri ('402) in view of Jaworski et al. ('440) by providing the remote actuating system as taught by Yoshida for the benefits and advantages of operational facility and comfort of user.

### ***Allowable Subject Matter***

11. Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record, including Borri (Patent No. 6,527,402), Muderlak (Patent No. 5,111,477) and Yoshida et al. (Patent No. 5,982,414), fails to show or suggest the applicant's invention as claimed. Specifically, the prior art of record does not disclose proper motivation for combining:

- a rheostat included in the housing, and adjusting light sound and fragrance systems as recited in Claim 24.

12. Claims 10,15,16,18,19, 28, 30 and 33 are allowed.

The prior art of record, including Borri (Patent No. 6,527,402), Muderlak (Patent No. 5,111,477), fails to show or suggest the applicant's invention as claimed.

Specifically, the prior art of record does not disclose proper motivation for combining at least a safe light emitting diode lamp comprising:

- the fragrance system comprising a combination of a receptacle with neck, a wick, the wick contacting the fragrance fluid, the wick absorbing the worm fragrance fluid, and emitting to the atmosphere as recited in claims 28 and 30;
- a rheostat included in the housing, and adjusting light, sound and fragrance systems as recited in Claim 33.

The above-indicated combination, including a fluid based fragrance system rheostat makes this invention unique.

Therefore, Claims 28,30 and 33 are allowed over prior art.

Claims 10, 15, 16, 18 and 19 are necessarily objected because of their dependency on the objected base Claim 30.

***Response to Amendment***

13. Applicant's arguments filed on June 16, 2003 have been fully considered but they are not persuasive.

Applicant's arguments with respect to the 35 U.S.C. § 102(b) rejection of claim 28 and the 35 U.S.C. § 103(a) rejections of claims 1-4, 9-11, 13, 17, 20, 21, 23, 26 and 31 has been considered but are moot in view of the new ground(s) of rejections.

***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hargobind S Sawhney whose telephone number is 703-306-5909. The examiner can normally be reached on 6:15 - 2:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 703-305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9319 for After Final communications.

Application/Control Number: 09/941,111

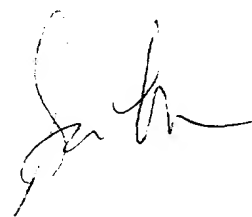
Page 15

Art Unit: 2875

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2956.

HSS

December 22, 2003

A handwritten signature in black ink, appearing to be "S. H.", located in the lower right quadrant of the page.